GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Siddeswar & Co., (P) Ltd, Hubli.

Award of the Industrial Tribunal, Bangalore—Published.

Read the following papers:—

(1) Letter No. I.T.No. 1214-15/67-68, dated 4th November 1967 from Shri A. Panchaksharaiah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated: 31st October 1967.

Present :

Shri A. Panchaksharaiah, B.A. (Hons.), LL.B. *Presiding Officer.*

I.D. No. 208 of 1966.

The Workmen of Siddeswar & Co. (P) Ltd., Hubli.
I Party

Vs.

The Management of Siddeswar & Co. (P) Ltd., Hubli.
II Party

APPEARANCES

For the I Party: Sri M. A. Kutty, President, Siddeswar & Co. (P) Ltd., Worker's Union Hubli.

For the II Party: S. V. Kadkol, Secretary, Sri Siddeswar & Co. (P) Ltd., Hubli.

Reference :

(G. O. No. LMA 596 LLD 66 dated 26th December 1966).

AWARD

The Workmen of Siddeshwar & Co. (P) Ltd., Hubli, represented by its President, Siddeshwrr & Co. (P) td., Workers' Union, Hubli, placed a demand before the II Party.

Management, known as Siddeshwar & Co. (P) Ltd., Hubli, for bonus for the year ended 3rd November 1964. The matter was conciliated by the Assistant Labour Commissioner and since the Parties did not agree for any settlement, a failure report was sent to Government on the basis of which the Government of Mysore referred this dispute for adjudication under Section 10 (1) (d) of the Industrial Disputes Act, 1947 in their Order No. LMA 596 LLD 66, dated 26th December 1966. The dispute was registered as I. D. No. 208 of 1966 and notices were sent to both the Parties to put in their respective claims.

2. The I Party-Workers' Union is represented by Mr. M. A. Kutty, President, Siddeshwar & Co. (Hubli) (P) Ltd. Workers' Union, Hubli and the Second Party is represented by the Secretary of Siddeshwar & Co., (Hubli) (P) Ltd.

3. The I Party put in a claim statement on 17th February 1967 in the course of which the I Party pleaded as follows:—

The I Party made demands for implementation of Labour Court Orders, Dearness Allowances, permanancy of workmen and other demands including bonus equivalent to three months' wages to be paid to all workmen through their letter dated 3rd September 1965 for the year 1963-64. The II Party did not pay heed to this letter of demands and as a consequence of which there was a strike from 7th September 1965 and ended on 19th September 1965. The strike ended in a settlement between the I Party Union and the Management on 19th September 1965 before the Conciliation Officer as per law. In the Settlement the demand for bonus for the year 1963-64 was not settled. This demand was raised by the I Party in September 1965. The demand for payment of bonus to workmen for the year ended 3rd November 1964 was admitted in conciliation and was concluded on 23rd September 1965 without reaching any settlement. The demand for bonus equivalent to 3 months' wages to all the workmen, the I Party contends that it is a reasonable demand especially in view of the fact that the II Party has been making huge profits.

It is contended by the I Party that there are two concerns run by the same Proprietors and both these concerns are owned by them though the transactions are kept separately to deprive the workers of all the benefits out of the profits. Industry No. 1 is the Siddeshwar & Co. Hubli, Private Ltd. Hubli, where the workmen are actually engaged or appointed to work. Concern No. 2 is Siddheswar & Co. The Directors of the Limited Concern

are also the directors of the second concern. Both these concerns are managed by the same directors and the profits obtained from both these concerns are distributed among them. The Siddeshwar & Co., Hubli (P) Ltd, Hubli, is manufacturing the goods when Siddheswar & Co., Hubli, are stocking and selling the same goods and obtaining huge profits. The profits by way of sales obtained by the Siddheswar & Co., Hubli are not brought into accounts of the Siddheswar & Co., Hubli Private Ltd., Hubli. By this the workmen employed in Siddheswar & Co, Hubli (Private) Ltd., Hubli, are subjected to exploitation and losses in their legitimate shares. The Siddheswar & Co., Hubli (P) Ltd, Hubli, has made huge profits in collusion with Siddheshwar & Co., Hubli for the year 1963 64 and the workers, therefore, are entitled to get bonus for the year 1963-64 at three months' wages. The above industry is very sound and is a leading Engineering Industry of its type in Hubli. It is, therefore, prayed that the accounts of both the concerns be summoned for verification and the total net profits be arrived at. The I Party, therefore prays that an Award may be passed entitling each of the workers to get 3 months wages as bonus from Siddheswar & Co., Hubli, Private Ltd. for the years 1963-64.

2. The II Party filed a counter statement questioning the correctness of the Statement made in the claim statement by the I Party. Messrs. Siddheshwar & Co., (Hubli) Private Ltd., Bangalore Road, Hubli are the manufacturers of various types of Steel security equipments and furniture and the workers now in dipute are the workers of this Company. Messrs. Siddheshwar & Co. Station Road, Hubli are the Sole Selling Agents for the products manufacturered by Messrs. Siddeshwar & Co. (Hubli) Private Ltd, by virtue of a Sole Selling Agreement executed between the two parties and are allowed Commission on the basis of sales effected by them It is submitted the Constitution of both the concerns is entirely different. The former Company is an incorporated Company under the Companies Act, 1956 while the latter is a registered firm. Amongst the other Partners the Directors are partners in the registered Company of Siddeshwar & Co, Station Road, Hubli. There is an agreement between these two firms. It is, therefore, contended by the II Party that to call both these firms as one firm is absolutely wrong. The Balance Sheets and Profits & Loss Accounts for both these Companies are drawn up separately and income tax assessments are also done separately. Therefore, the two Firms are separate entities altoge ther. Regarding the Bonus for the year 1963.64, it is submitted

by the II Party that the workmen are not entitled to any bonus because the Company has sufferred a net loss of Rs. 36,517-40 It is also pleaded that during the year in question, the workers have been paid an amount of Rs. 11,476-60 P. on *ex-gratia* basis in accordance with the Agreement and hence the I Party workmen are not entitled to any bonus for the period in question. On these grounds, the II Party has prayed that the claim of the I Party be dismissed.

3. Mr. Kutty, representative of the I Party, filed an application and requested the Tribunal to implead Messrs. Siddheswar & Co., Station Road, Hubli, as a Party to this Dispute. This was objected to the II Party on the ground that the two firms are different entities with nothing in common. After hearing arguments I passed orders on 23dr June 1967 rejecting the application of the I Party to bring on record Messrs. Siddheshawar & Co., Station Road, Hubli. The matter was taken up by the I Party in Writ Petition No. 1780 of 1967 on the File of the Hon'ble High Court under Articles 226 and 227 of the Constitution of India, and their Lordships of the High Court rejected the Application as there are no grounds for entertainiag the same.

4. On the strength of these pleadings, two Issues were framed by me in addition to the points of dispute which are referred to me. The case was then taken up for evidence at my Hubli Camp on 26th October 1967 when the I Party examined one witness and closed the case on his side and the II Party also examined one witness and closed the case on their side. During the course of arguments, Mr. Kutty, who represented the I Party, admitted that the workmen of the I Party have received a sum of Rs. 11,476.69P, but he contended that was not paid towards bonus but the same was paid in pursuance of the agreement to enhance the wages of the workmen. The I Party has filed two documents. They are Exts. W. 1 and W. 2 Ext. W. 1 is a copy of the Agreement dated 19th September 1965 and Ext. W. 2 is a copy of the demands placed by the I Party before the Assistant Labour Commissioner. It is dated 24th June 1966. Ext. M. 1 dated 18th September 1964 is a copy of the Agreement produced by the II Party and Ext. M. 2 is a copy of the Balance Sheet for the concerned year. Taking these two documents with the evidence of M. W. 1, it is clear that the demand of the workmen for bonus for the year 1963-64 cannot be said to be barred nor can it be said that the payment of Rs. 11,476.69 was towards the payment of bonus for the year in question. M. W. 1 has produced Ext. M.1

a copy of the Agreement dated 18th September 1964. As per this Agreement (Ext. M. 1) the Management agreed to give additional wage of Rs. 25P per day per worker from November 1963 to all the employees and this amount was paid in three instalments making up all-told Rs. 11,476 69. This has nothing to do with the claim for bonus. Moreover, Ext. M. 1 is an earlier document dated 18th September 1964 according to which it is contended by the II Party that the workmen had agreed to withdraw the pending demands and disputes including the demand for bonus either with the conciliation officer or with the Government. This would refer only to the claim for bonus for the year 1962 63 and not for the period in question. According to Ext W. 1 which is of a subsequent date, the demand for bonus under clause No. 9 was not pressed only for the time being but that does not mean that the workmen have given up their right to press for bonus for the year 1963-64. M. W. 1 in an unmistakable terms admitted that after 18th September 1964 that is after the date of Ext. M. 1, there was an agreement on 19th September 1965 as per Ext. W. 1. He further admits that Ext W. 1 supercedes the Ext. M. 1. According to me it is true that clause 9 of Ext W. 1 the demand for bonus equal to 3 months wages for 1963 64 and that is for this bonus the present demand is raised by the workers. He persisted in saying that there was conciliation in this respect and no settlement was arrived at in the conciliation. Therefore, it is clear that the contention raised at the time of the argument by the II Party that the workmen have given up their demand under Ext M. 1. *viz.* Bonus for 1963-64 does not survive. Similarly on Issue No 1, the II Party has to fail. My finding on Issue No. 1 is that the I Party workmen are entitled to put in a claim for bonus in spite of the fact that they were paid Rs 11,476-69 in 1963-64 under an Agreement.

7. I now come to the question of Bonus itself.—whether there is any available surplus for the I Party workmen to claim bonus for the year 1963-64. The II Party has produced the balance sheet for the year 1963-64 and the same has been marked as Ext. M. 2. MW-1 has sworn to this balance sheet Ext. M. 2. The accounts are audited by Messrs. Abhyankar & Co., chartered accountants. Mr. M. A. Kutty, who appeared for the I Party did not question the validity of the Balance Sheet or the relevancy of this balance sheet. For our purpose of Bonus Issue or for the purpose of finding out if the II Party has made any profit for the year in question, the balance sheet is the best piece of evidence and since it is an audited balance sheet by the Chartered

Accountants, it has all the value as held by many decisions of the Supreme Court. M. W. 1 sworns that for the year in question for which the bonus is claimed the II Party has sustained a loss of R-. 36,517·40 P. There is no available surplus for the I Party workmen so claim bonus for the year in question. The I Party workmen would be entitled to bonus only if they are able to prove that the II Party had made any profits for the year in question or from showing there is any profit for the year in question. The I Party has failed miserably to show that there has been any available surplus or even allocable surplus for the payment of bonus. I, therefore, find that the II Party has not made any profit for the year ending 3rd November 1964 to pay bonus to its workmen. Accordingly, I answer the Reference in the negative and my finding is that the workmen of M/s. Siddeshwar & Co., Hubli (Pvt) Hubli, are not entitled for the payment of bonus for the year ended 3rd November 1964.

8. In the result, the Reference fails and the same is rejected. In the circumstances, each Party will bear its costs.

A. PANCHAKSHARIAH
Presiding Officer,
Industrial Tribunal,
Bangalore.
31-10-67

ORDER.

Bangelore, dated 13th November 1967.

S. O. 2192.—WHEREAS by State Government Order No. LMA 596 LLD 66, dated 26th December 1966, the Industrial Dispute between the Workmen and the Management of Siddeswar & Co., (P) Ltd, Hubli was referred to the Industrial Tribunal, Bangalore for adjudication;

AND WHEREAS the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 596 LLD 66.]

By Order and in the name of the Governor of Mysore,

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G. G. PUROHIT, *Under Secy.*